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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-463

JOSEPH M. KADANS, Appellant

VS.

JON R. COLLINS, ET AL, as members
of the
NEVADA SUPREME COURT,
Appellees,

- - - - - - - - - - - - -

BRIEF OPPOSING MOTION TO DISMISS

JOSEPH M. KADANS, ESQ.
Appellant in pro per.
Member of the Bar of the
Supreme Court of the U.S.
3519 Thom Blvd.
Las Vegas, Nev. 89106

(Continued)

Supreme Court, U.S.
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INDEX

	Page
Appeal or certiorari	1, 17
The 17 States Point	2-7-16
Admission in Arizona	7
Nevada stands practically alone in rule	8
Experience rather than examination	8
No fault with ABA approval of schools	9
Real purpose of ABA law school list	9
Vice President of U.S. fellow graduate	9
High standing of Appellant in the law	10
Denial of admission conflicts with Schware	10
Nevada rule offends dictates of reason	11
Appellees quote from dissenting opinion	11
Substantial question involved here	12
Appellees do not apply their rule to all	13
U.S. Supreme Court has qualified Appellant	14
Relief sought	16-20

TABLE OF AUTHORITIES

Statutes

Federal

28 U.S.C. 1343	15
28 U.S.C. 1253	1, 17
28 U.S.C. 2103	17
28 U.S.C. 2201	20
28 U.S.C. 2281	5
28 U.S.C. 2284	6

State

Alaska -Sec. 08.08.140	12
Arizona Sup. Ct. Rule 28(c)(4)	7
Arkansas -25-109	6
Idaho 3-408	6
Illinois -Sup. Ct. Rule 705	3
Indiana -Sup. Ct. Rule 3-5(d)	3
Maine - Title 4, sec. 802	3
Nebraska -Title 7-109	3
New Hampshire - 311:3	4
New Mexico - Title 18-1-8	4
North Dakota, 27-11-25	4
South Dakota 16-16-12	5
West Virginia, Appendix, Part II	5
Wisconsin, 256.28(3)	6
Nevada -Sup. Ct. Rule 51(6)	16, 18

(Continued)

INDEX - CONTINUED

Page

CASES

Garland, Ex Parte, 18 L ed 366 ---------- 11, 14
Hackin v. Lockwood, 361 F 2d 499 --------7, 18, 19
Idlewild Liquor Corp. v. Epstein, 370 U.S. 713--18
Keenan v. Bd. of Law Examiners, 317 F.S. 1350-15
Law Students v Wadmond, 27 Led 2d 749 ---- 14
Nelson Case, Nev. Sup. Ct., 12-19-66 -------- 13
Poresky, Ex Parte, 290 U.S. 30 ---------- 19
Schware v. Bd. of Bar Exam. 353 U.S. 232 - 10, 17
Truax v. Corrigan, 257 U.S. 312 --------- 11
Webster v. Wofford, 321 F.S. 1259 ------ 15

LAW JOURNALS

J.A.B.A. Dec. 1921 ---------- 9
J.A.B.A. Oct. 1967 Vol. 53, p. 915 ------ 8, 16

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-463

JOSEPH M. KADANS, Appellant

v.

JON R. COLLINS, ET AL., as members of the NEVADA SUPREME COURT, Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS - 9TH CIRCUIT (No. 26,522)

- - - - - - - - - - - - - - - -

BRIEF OPPOSING MOTION TO DISMISS

- - - - - - - - - - - - - - - -

One of the questions raised by the Motion to Dismiss pertains to the question of the Appellant's right to appeal or whether he is limited to petition for certiorari. (Motion to Dismiss, page 6.) Of course, where there is a right of appeal, the controversy will be determined by the Supreme Court; whereas, a petition for certiorari may be denied consideration for one reason or another.

The Appellees argue that despite the clear wording of the federal statute that a case such as the case at bar is required by law "to be heard and determined by a district court of three judges" (28 USC 1253) the Appellees contend that "since the case was not in fact heard by a district court of three judges, a direct appeal to this Court will not lie." (Motion to Dismiss, page 6.)

Appellees believe that the wording of the federal statute is not plain and that in such a case it is good to look at the title of the statute and that if the title helps to explain what is not plain then this resolves the problem.

The title reads: "Direct appeals from decision of three judge courts." Appellees cite Maguire v. Commissioner, 313 U.S. 1, 9-10 and F. T. C. v. Mandel Brothers, 359 U.S. 385, 388-389 to support the view that the title of the statute may be viewed in order to remove any ambiguities that may exist in the text of the statute.

The procedural question as to the route that may be taken to reach the Supreme Court of the United States on the merits is rather inconsequential. The important point is that we are here and that, further, appellees concede that there is jurisdiction but say that "the substantive question presented does not warrant further review." (Motion to Dismiss, p. 7)

APPELLEES DO NOT SEE THE ISSUE

Appellees have failed to see the true issue in this case. The issue involves the right of a lawyer to move from one state to another and be subject only to reasonable rules. Reasonable rules for lawyers in effect in practically all of the States merely require that the transferring lawyer be of good character, have been admitted to practice before the highest court of the state of his former residence and have practiced for a reasonable number of years in the state of former residence.

Appellees have listed 17 States they say "do not permit any alternative to their requirement of graduation from an A. B. A. -approved law school." (Motion to Dismiss, p. 9)

Appellees have obviously erred in listing Alaska as one of these States. The Alaska Statutes (Sec. 08. 08. 140, Out-of-state attorneys) do allow an alternative. They provide that graduation from an ABA-approved law school is not required if the attorney "has been engaged in the active practice of the law for at least 10 years." Appellant was engaged in the active practice of law from 1943 to 1962, when he first arrived in Nevada, a period of 19 years.

Appellees have further committed obvious error in listing the State of Illinois in the group named by them as having no alternative to the ABA-approved law school requirement. Supreme Court Rule 705 of Illinois allows admission of attorneys to the Bar of Illinois without examination "if he has actively and continuously practiced law in such other jurisdiction for a period of at least five years within the period of seven years immediately prior to making application in Illinois."

Appellees committed further obvious error in listing the State of Indiana in the group. With regard to lawyers from other States moving to Indiana, graduation from a law school not approved by the A. B. A. does not bar admission. The alternative provided by Indiana is that in such event "the State Board of Law Examiners may in its discretion substitute for said requirement such examination of the applicant as the board may deem necessary." (Rule3-5 (d) Admission on foreign license. Rules of the Supreme Court."

Appellees committed further obvious error in listing the State of Maine. This State has a rule that attorneys from other states "in good standing and in active practice for at least 3 years and has been a bona fide resident of this State for the 6 months last past, shall furnish the Supreme Judicial Court a certificate of admission to practice in the court of last resort of such state or a certificate of admission to any district court of the United States * * * " after which the Court "may in its discretion, if satisfied as to his qualifications, admit such person to practice on motion made by some member of the bar of said court." (From Title 4, Maine Statutes, sec. 802.)

Appellees committed further obvious error in listing the State of Nebraska. That State allows attorneys from other states to be admitted without examination. Again, as an alternative to an ABA-approved law school, the Nebraska statute (Attorneys At Law, Title 7-109) reads: "* * * proving that he has practiced law five full years in courts of record under license in any state, and proving also that he is a person of good moral character, may be admitted by the Supreme Court

to the bar in this state without examination."

Appellees again obviously erred in listing the State of New Hampshire as a State having no alternative to the rule requiring legal education from an ABA-approved law school. Statutes of the State of Nebraska (Occupations and Professions, 3ll: 3 Attorneys and Counselors) read:

> "Any person who has been admitted to practice as an attorney or counselor of the highest judicial court of another state of which he was then an inhabitant may be admitted to practice as an attorney in this state, upon satisfactory evidence of his good moral character, without examination concerning his other qualifications, when such examination is rendered unnecessary by the circumstances of the case."

The complete misapprehension of appellees in failing to understand the principle issue of this case is further emphasized by the listing of the State of New Mexico as a state having no alternative to the rule that an attorney moving to New Mexico and seeking admission to the bar of that State must be a graduate of a law school approved by the ABA. On the contrary, New Mexico has a rule that when an applicant for admission to the bar of that State and if "he be an attorney duly admitted to the bar in another state and actively engaged in the practice of law therein" may be admitted on certificate and motion. (Rules, Regulations for Admission and Practice, Attorneys At Law, Title 18-1-8 New Mexico Statutes)

Appellees additionally inadvertently submitted erroneous information to this Honorable Court in stating that the State of North Dakota has no alternative to the rule requiring graduation from an ABA-approved law school. The Supreme Court of North Dakota has discretion under the statutes of that State to admit to the bar without examination an attorney who "has been admitted to the bar of some other state, territory, or the District of Columbia; and 5. Has practiced law in such state, territory, or in the District of Columbia for not less than five years." (N. D. Statutes 27-11-25)

Evidence of total misconception of the issue at

bar is further emphasized by the obvious error of Appellees in listing the State of South Dakota as a State wherein there is no alternative to the rule that there is no admission to the bar of that State unless the attorney-applicant is a graduate of an ABA-approved law school. The statutes of that State (Courts and Judiciary, 16-16-12, entitled Qualifications for admission on certificate from another state - Papers filed with application) reads:

> "Any person duly admitted to practice in other states or territories or the District of Columbia desiring admission to practice law in this state may make application to the board of bar examiners and upon proof that he has been admitted to practice in the highest court of such other jurisdiction or jurisdictions and has been actively engaged in the general practice of the law therein, or the teaching of law as a full-time instructor in a reputable law school or schools, for at least five years next preceding his application may in the discretion of the court be admitted to the general practice of law in this state without examination. * * * "

Another obvious error and misleading statement, inadvertent of course, is the positive statement in the Motion to Dismiss, page 9, that the State of West Virginia has no alternative to the rule that an applicant for admission to the bar must be a graduate of an ABA-approved law school. West Virginia statutes (Appendix, Nonresident Attorneys, Part II) clearly state that attorneys from other states may be admitted without examination upon the filing of a certificate "of the presiding judge of one of the trial courts of record in the former home city or county of applicant, or the affidavits of two practitioners in his home city or county, showing that the applicant has practiced law actively for at least five of the immediately preceding seven years; * * *." As in the rules of the other states listed herein, there is no requirement of graduation from an ABA-approved law school for such attorney applicants.

Appellees have stated that no less than 17 states "do not permit any alternative to their requirement of graduation from an A. B. A. -approved law school." (Motion to Dismiss, page 9) Among these states they have listed the State of Wisconsin. The Wisconsin statutes (256. 28 (3) Courts of Record, general provisions) have requirements that attorneys seeking admission to the Wisconsin bar "may be admitted to practice law in this state upon motion, or, when the court is not in session, by one of the justices thereof, after filing with the clerk of the supreme court (1) his written application therefor, (2) a certificate of his admission to practice law by a court of last resort in such other state or territory or the District of Columbia and (3) satisfactory proof that he is a citizen of the United States and a resident of this state, is of good moral character, and has been engaged in actual practice in such other state or states or territory or the District of Columbia or in the courts of the United States for 5 years within the last 8 years prior to filing his application, exclusive in each case of time spent in the armed forces."

Of the 17 states mentioned by Appellees, this brief opposing the Motion to Dismiss has thus far named Alaska, Illinois, Indiana, Maine, Nebraska, New Hampshire, New Mexico, North Dakota, South Dakota, West Virginia and Wisconsin. These number 11 states that should certainly be deducted from the figure of 17 named by Appellees. A brief review of the statutes of the State of Arkansas indicates that nonresident attorneys are allowed to practice in Arkansas "with satisfactory proof of his being a member of the bar in good standing in the state of his residence." (25-109, Arkansas statutes) However, it is not clear as to the rule applicable when such nonresident attorney becomes a resident of Arkansas.

In the State of Idaho, "The board of commissioners of the Idaho State Bar) shall have power to determine, by rules, subject to the approval of the Supreme Court, the qualifications and requirements for admission to the practice of law and to conduct investigation and examination of applicants, and it shall from time to time certify to the Supreme Court the names of those applicants found to be qualified." (Idaho Statutes 3-408, Attorneys and Counselors at Law) There do not seem to be indicated in the statutes

their precise rules governing attorney applicants from other states and rather than make an allegation that could be incorrect the Appellant chooses to omit this State from the list of States that clearly allow attorneys from other states to be admitted either with or without examination and without regard to the listing of the law school as an ABA-approved school.

It is likewise not clear from an examination of the statutes of the State of Louisiana whether or not attorneys from other States may be admitted to the bar of Louisiana irrespective of graduation from an ABA-approved law school. The same comment is made with regard to examination of the statutes of Minnesota and New Jersey. Apparently, the specific requirements are not in the statutory laws but are to be found in rules adopted by state boards of bar examiners not found in the statutes.

THE STATE OF ARIZONA

Appellees make much ado about the admission rules of the State of Arizona, relying mainly if not entirely upon the case of Hackin v. Lockwood, 361 F 2d 499, wherein the United States Court of Appeals, 9th Circuit, upheld the right of the State of Arizona to deny to Hackin the right to take the State bar examination. Appellees consider that the rule in the Hackin Case governs the case at bar.

Can it be possible that Appellees do not know that if Appellant herein applied for admission to the bar of the State of Arizona that Appellant would be promptly admitted under the laws of Arizona? Apparently they do not realize this or they would not be contesting this suit.

Examination of the statutes of Arizona clearly indicate that this Appellant would be eligible for admission to the bar of that State. The Rules of the Supreme Court of Arizona, providing for the admission of attorneys, in addition to requiring that applicants for admission to the bar be graduates of law schools "provisionally or fully approved by the American Bar Association at the time of his grad-

uation" also, alternatively, to use the word of Appellees has this provision:

> "provided that this requirement shall not apply to an applicant who has been actively engaged in the practice of law in some other state or states for at least five years of the last seven years prior to his application for admission to practice in Arizona."

Thus, it is most clear, [redacted] that the Hackin case, supra, the Arizona case upon which Appellees rely, is entirely inapplicable to the case at bar, Appellant having practiced law for 19 years in the States of Maryland and Michigan prior to making application for admission to the bar of the State of Nevada.

If Nevada does not stand alone in adhering to the rule that regardless of the number of years of practice of an attorney-applicant and regardless of the number of law-bookswritten by the attorney-applicant or the law schools wherein such attorney-applicant has taught, such an applicant must nevertheless be denied admission to the State bar examination if he has not graduated from an A. B. A.-approved law school, then Nevada has very little company in adhering to that rule. In fact, the research done by Appellant indicates that no other State -- other than Nevada -- has such a rule.

A recent article in the Journal of the American Bar Association (Vol. 53, p. 915, October, 1967) points out that only 11 of the 50 states still require attorneys moving from one part of the United States to another part to take the State bar examination. In addition the article makes the statement that:

> "Professional fitness is measured in terms of actual experience instead of by formal examination."

THE ABA-APPROVED LAW SCHOOL CONCEPT IS NOT INVOLVED IN THIS CASE.

Appellees would have this Honorable Court believe that Appellant is seeking to tear down the concept of use of the present system of approval of law schools by the A. B. A. This is certainly not the intention of Appellant. The Appellant is in favor of continuing the concept of intending law students selecting for the study of law those law schools on the list of the American Bar Association's Section of Legal Education and Admissions to the Bar.. As a matter of fact, Appellant is actually a member of the Section and receives the publications and news letters issued by the section.

Appellant has taught law at a fully accredited ABA-approved law school -- Loyola University School of Law of Los Angeles and Appellant has in fact graduated from a law school fully accredited by the State of Maryland and passed the Maryland State bar examination in 1943 and was admitted to the Maryland bar the same year. The law school attended by Appellant, the University of Baltimore, is the same law school attended by the present Vice-President of the United States, the Hon. Spiro Agnew, who attended the law school at about the same time it was attended by Appellant. Many other outstanding officials and judges have attended this same law school.

It must be remembered, as stated in the A. B. A. Journal of December, 1921 that the list of law schools was intended for the guidance of "intending law students." It was never intended that the list be . used to bar attorneys from moving from one part of the United States to another, in the event they learned law from some school not on the list. To get on the approved ABA list, law schools had to have a minimum library of law books and a minimum number of law school full time professors. Many law schools, such as the University of Baltimore, advised students to use the county law libraries and the professors were practicing lawyers and judges who taught law school at night. Appellant chose to attend a night law school because of his government employment as a Safety Inspector with the U. S. Interstate Commerce Commission.

In addition to teaching at Loyola Law School, Appellant is the author of PRINCIPLES OF MARITIME LAW, a text recommended by the American Association of Law Schools for law school students. In addition, Appellant has taught Federal Procedure at Eastern College of Commerce and Law, Baltimore, Maryland, a State-approved law school and has written the book FEDERAL ADMINISTRATIVE AND COURT PROCEDURE. Appellant has also taught insurance law and has written the book ELEMENTS OF INSURANCE. After moving from Baltimore, Maryland to Detroit, Michigan in 1950, Appellant was admitted to the Michigan Bar on certificate and motion and practiced law from the time of admission until 1962 when Appellant moved to the State of Nevada. While practicing law in Detroit, Appellant taught economics, public speaking, government, history of civilization and business law at Great Lakes College in Detroit. These items are mentioned to indicate the broad education of Appellant, countering the implication running throughout the Motion to Dismiss that Appellant's qualifications are too limited to entitle him to take the Nevada bar examination.

Referring to Schware v. Board of Bar Examiners, 353 U.S. 232, "any qualification must have a rational connection with the applicant's fitness or capacity to practice law." When an attorney-applicant has practiced law in a sister state or states for 19 years, and has taught in two law schools, one fully accredited by the ABA and the other fully accredited by the State of Maryland, and has written several law books, one recommended by the Association of American Law Schools and has taught several important college subjects to college undergraduates, the qualification of graduation from an ABA-approved law school in order to take a state bar examination does not have a rational connection with the applicant's fitness or capacity to practice law.

The Nevada Supreme Court Rule, therefore, adopted by Appellees, in not providing for lawyers with many years of law practice and graduation from a law school approved by his state of former residence,

is therefore believed to be void on its face for overbreadth and for "chilling" the 14th Amendment rights of Appellant affecting due process of law. This case is similar to the Schware Case, supra, wherein the Court held:

> "Refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the due process clause. Such is the case here."

The late Mr. Justice Black, in speaking for the majority in the Schware Case, supra, noted:

> "We need not enter into a discussion whether the practice of law is a 'right'or a 'privilege.' Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace. Ex Parte Garland, 4 Wall. 333, 18 L ed 366, 370."

DISSENTING OPINION QUOTE

Appellees have quoted from a dissenting opinion, neglecting to note that the quotation was from a dissent. They refer to the case of Truax v. Corrigan, 257 U.S. 312 (Motion to Dismiss, page 11) and cite Mr. Justice Holmes as guarding against the use of the 14th Amendment beyond the absolute compulsion of its words. The majority opinion was written by Chief Justice Taft, wherein the Court reversed a decision of the Supreme Courto of the State of Arizona in a case involving injunctive relief in an industrial dispute. The majority concluded that the defendants should have been required to answer, in the case below and that the demurrer should have been overruled and that "if the evidence sustains the averments of the complaint, an injunction should issue as prayed."

Appellees would have this Honorable Court believe that Mr. Justice Holmes favored restriction of the use of the 14th Amendment. They avoid using the first part of the sentence and avoid using the final part of the sentence and, no doubt due to typographical error, indicate to this Honorable Court that the sentence of Mr. Justice Holmes ended with the word "states." Actually, the full sentence of Mr. Justice Holmes reads:

> "There is nothing that I more deprecate than the use of the 14th Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several states, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect." (From dissenting opinion of Mr. Justice Holmes in Truax v. Corrigan, supra.)

When the full sentence is read in its whole concept, the meaning of it seems to be entirely the reverse which Appellees seem to desire to convey to the Court, inadvertently of course. In other words, Mr. Justice Holmes believed that the 14th Amendment should not be stifled or its use unjustifiably restricted to prevent important social experiments desired by a community even though the experiment may seem futile or noxious to him. Appellees would have the Court believe that the 14th Amendment should be most rigidly restricted, according to Mr. Justice Holmes. Without noting that this was in a dissent, Appellees mistakenly and improvidently gave the impression that the majority of the Court, in the Truax Case, expressed the view that a narrow interpretation of the 14th Amendment by the Supreme Court of the United States is the law of the land. This view is far from justified.

SUBSTANTIAL QUESTION

From the foregoing, it appears clear that a substantial question of transcending national importance is involved. There are not only large numbers of

attorneys interested in learning whether or not a state adopting a most unreasonable, arbitrary and restrictive rule for admission to practice can thus prevent them from moving freely to Nevada or any other States that may have highly restrictive and unreasonable rules, but there are also many citizens in Nevada and possibly in other states who are denied the benefit of the services of attorneys such as the Appellant herein because highly restrictive and unreasonable rules prevent those attorneys from being employed to serve them.

In addition, it is of vital and substantial importance to Appellant, who for eight years has instituted numerous legal actions and petitions in Nevada seeking to be allowed to take the Nevada bar examination, all to no avail. As far back as 1963, Appellant paid the required $200.00 fee with his application after being told by the Secretary of the State Bar of Nevada by letter that no answer could be given as to the admission to the bar examination even when a non-ABA-approved law school was involved unless formal application was made and the fee paid.

Incidentally, Appellees do not apply the ABA law school rule uniformly. In Nevada Supreme Court Case No. 5114, filed Dec. 19, 1966, the Appellees admitted Mr. Clarence A. Nelson, Jr. to the practice of law in Nevada, ruling that Mr. Nelson had moved to Nevada because of "medical necessity." The Appellees were fully cognizant of the fact that Mr. Nelson had graduated from a non-ABA-approved law school.

The Supreme Court has ruled in numerous cases that it will take jurisdiction and rule on matters involving admission to the bar.

Furthermore, the Supreme Court's own bar is involved. Appellant, as a member of the bar of the United States Supreme Court, is effectively estopped from taking cases to this Honorable Court because the State of Nevada, by Appellee's Rule 51(6),

prevents Appellant from taking cases to the courts -- any courts.

This Honorable Court long ago decided in Re Garland, supra, that:

> "The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counselors, and are entitled to appear as such and conduct causes therein."

Nevertheless, despite this statement of the Supreme Court of the United States, Appellees have not only denied to Appellant the right to practice law but have even denied to him the right to take the state bar examination so that he may demonstrate his knowledge of the law. Appellees have done this despite the fact that Appellant graduated a law school fully approved by a sister state; Appellant was admitted to the practice of law by a sister state; and Appellant practiced law for 19 years in two sister states.

LAW STUDENTS RESEARCH COUNCIL

Appellees refer to the case of Law Students Research Council v. Wadmond, 27 L. Ed 2d 749 and although this case refers to the right of a State to inquire of applicants for bar admission as to their views on the violent overthrow of government, Appellees insist this case applies to the case at bar, where Appellant is an attorney-applicant seeking only to have the right to take the Nevada state bar examination and being barred therefrom solely because his law school, although approved by the State of his then residence, Maryland, has never been on the list of ABA-approved law schools.

Appellees assert that the case at bar is to be bound by the Law Students Research Council Case although they are careful in their Motion to Dismiss to assert that two other cases, dealing

vith residence requirements, are wholly inapplicable. Pages 10 and 11 of Motion to Dismiss)

While Appellees rely on the Law Students Research Council Case, supra, it is pointed out that his Honorable Court commented that:

> "We note at the outset that no person involved in this case has been refused admission to the New York Bar."

On the other hand, the residence cases (Keenan v. Board of Law Examiners, 317 F. Supp. 1350 and Webster v. Wofford, 321 F. Supp. 1259) both involve denial of admission to practice law. Thus, here would seem to be more relevancy in the residence cases than in the Law Students' questionnaire Cases, supra.

Appellees designate the Keenan case as wholly inapplicable despite the fact that the three-judge court made this statement:

> " *** federal district courts have jurisdiction under 28 USC 1343 to consider claims arising out of the application by state officials of a general bar admission requirement that is alleged to be unconstitutional on its face."

Inasmuch as in the case at bar, Appellant alleges that the rule of Appellees is unconstitutional on its face, then there would certainly seem to be federal court jurisdiction and the action of the lower federal district court judge in dismissing the action without requiring an answer would seem to be without merit and in need of reversal.

The Law Students Case, supra resulted in a ruling that the State of New York could continue to make constitutionally permissible investigations of applicants. "New York has made its choice. To disturb it would be beyond the power of this Court." So ruled this Honorable Court, and there is no conflict between that decision and the case now

before this Honorable Court. Nevertheless, Appellees, in the Motion to Dismiss (p. 10) urge this court to take the view that this Honorable Court has no power to disturb the overbroad Rule 51(6) of Appellees that prevents this Appellant and many other attorneys similarly educated in non-ABA approved law schools from taking the Nevada bar examination.

Appellant does not question the right of Appellees to require attorney-applicants to take the Nevada bar examination, although Nevada is one of 11 States in the Union that acts so harshly in regard to attorneys who wish to move to Nevada from other parts of the country. (J. A. B. A. Vol. 53, p. 915, Oct. 1967) Appellant does question the right of Appellees to adopt a rule that bars attorney-applicants from taking the state bar examination unless graduated from an ABA-approved law school. Although Appellees have stated in their Motion to Dismiss that 17 states have similar rules, Appellant in this brief opposing the Motion to Dismiss has shown that this statement of Appellees is obviously in error insofar as 11 states are concerned.

CONCLUSION

Appellant respectfully suggests to this Honorable Court as follows:

A. That this Court deny the Motion to Dismiss for the reason that a substantial federal question is presented. For eight years, Appellant has been denied the right to take the Nevada bar examination due to an arbitrary and unreasonable rule adopted by Appellees. As a result he has been suffering irreparable injury since that time by being denied the right of practicing his profession. In addition, many other lawyers situated in similar positions to Appellant, will be affected by this decision and a large number of citizens are likewise affected, as they may not select as

their attorneys those attorneys residing in Nevada who have not been admitted to the practice of law in Nevada because of Rule 51(6) adopted by Appellees.

B. That this Court consider this as an appeal rather than as a petition for a Writ of Certiorari to the Ninth Circuit. The statute involved, 28 USC 1253 clearly states that a party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. Such an appeal may be a direct appeal. In the case at bar, however, Appellant chose to first appeal to the United States Court of Appeals, Ninth Circuit, and upon denial of relief in that Court, Appellant decided to continue to seek relief by continuing the appellate process to the United States Supreme Court. It would be violative of the plain directions and intent of the Congress to deny such appeal to the Supreme Court of the United States. By taking away from a single judge court the right to declare a state statute unconstitutional, the Congress allowed the right to take an appeal direct to the Supreme Court as compensation for such denial of single judge court action.

C. That even if this is to be considered as a petition for a writ of certiorari by reason of Title 28 USC 2103 (as cited on page 3 of Motion to Dismiss) then in such instance certiorari should be allowed as the Court of Appeals, Ninth Circuit, has decided a federal question in such a way that it conflicts with applicable decisions of the Supreme Court of the United States, particularly in conflict with the Schware Case, supra.

D. The District Court Judge erred in not asking for or requesting the Chief Judge of the Ninth Circuit to arrange for a three-judge Court. The Complaint filed with the District Court alleged that the Supreme Court Rule (51(6)) was unconstitutional (14th Amendment), an injunction was sought to enjoin application of the rule, and it is conceded by Appellees that the rule has the effect of a State statute. "When an application for a statutory three-judge court is addressed to a district court, the court's inquiry is appropriately limited to determining whether the constitutional issue is substantial, whether the complaint at least formally alleges a basis for equitable relief, and whether the case presented otherwise comes within the requirements of the three-judge statute. Those criteria were assuredly met here, and the applicable jurisdictional statute therefore made it impermissible for a single judge to decide the merits of the case, either by granting or by withholding relief." (Citation from Idlewild Liquor Corp. v. Epstein, 370 U.S. 713) The action of the U.S. Court of Appeals in affirming the single judge's action in withholding relief or in failing to convene a three-judge court should therefore be reversed. The case should therefore be returned to the District Court with instructions to convene a three-judge court to consider this litigation. There has been more than adequate representation made here to remove any doubt as to the existence of a substantial federal question. The U.S. Court of Appeals declined to recognize the issue to be a substantial federal question, relying solely upon the case of Hackin v. Lockwood, supra, but that case is clearly distinguished from the case at bar. The Notice of Appeal to the Supreme Court stressed that a three-judge court should have been convened and the jurisdiction statement (p. 8) makes the point that the "District Court has clearly abused its discretion by arbitrarily and capriciously denying to appellant his clear right to a three-judge court."

E. Appellees have closed their eyes to the real issue. Appellees have constantly taken the position

that the case does not deserve a three-judge court because of the decision of the Ninth Circuit in Hackin v. Lockwood, supra. However, it has been pointed out that the Hackin Case, supra concerns a layman seeking to take the state bar examination, whereas the case at bar is the case of an attorney applicant who was admitted to his state's bar examination (Maryland) many years ago (1943), passed the examination and actively spent full time in practicing law for many years (19) prior to seeking admission to the Nevada State Bar Examination, denied to him by Appellees on the basis of the attorney having attended a law school approved by his State (Maryland) but not approved by the American Bar Association. Appellant commenced his law school studies in 1940, at which time Appellees' did not have the ABA law school requirement in effect. Appellees have on several occasions denied Appellant the right to take the Nevada bar examination solely for the law school reason. They now insist that the appeal should be dismissed and continue to insist that their law school rule is rational and reasonable despite the fact that Nevada stands alone or almost alone in applying the ABA law school rule to seasoned attorneys moving from one state to another.

F. It is therefore respectfully urged that this Honorable Court reverse the decision of the Ninth Circuit and order that this litigation be considered by a three-judge federal court as required by 28 USC 2281 and 28 USC 2284. The Complaint presented to the U.S. District Court is not "obviously without merit" and there have been no previous decisions of this Court on this subject of controversy and therefore no previous decision of this Court forecloses the subject. (Ex parte Poresky, 290 U.S. 30.)

G. As alternative relief, inasmuch as Appellant is daily sustaining irreparable injury by not being allowed to practice his profession and inasmuch as this is also an action filed for a Declaratory Judgment under 28 USC 2201 and inasmuch as under the statute the "court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar" and inasmuch as appellant has a clearly meritorious case, it is respectfully suggested to this Honorable Court that the Court, having all the facts before it, render summary judgment without any further delay.

H. If summary judgment is rendered at this time without any further delay, it is respectfully suggested that this Honorable Court order Appellees to admit Appellant to the roll of attorneys allowed to practice law in Nevada forthwith, Appellant being obviously qualified to practice law; with the condition or provision that allowance to practice law be continued until Appellant takes the State bar examination which is not scheduled to take place until September, 1972 and that if after taking the state bar examination and should Appellant fail to pass the said examination the right to continue practice law shall then terminate until such time as Appellant may pass the examination in future examinations. The Appellant herein is already 59 years of age and the continued denial to him of his clear right to practice his profession is a most incongruous and unseemly denial of justice.

Respectfully submitted,

JOSEPH M. KADANS
Appellant. In pro per.